



# California Fair Political Practices Commission

April 2, 1990

Honorable Calvin Schmidt  
Judge, Harbor Municipal Court  
P.O. Box 9686  
Newport Beach, CA 92660

Re: Your Request for Informal Assistance  
Our File No. I-90-077

Dear Judge Schmidt:

You are seeking advice regarding your duties and responsibilities under the disclosure and campaign contributions provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your request for advice does not refer to a specific pending governmental decision, we are treating your question as a request for informal assistance only, pursuant to Regulation 18329 (copy enclosed).<sup>2</sup>

The following advice is based upon the facts provided both in your letter of January 19, 1990 and in your prior telephone call to this agency on January 17, 1990. Our advice is limited to provisions of the Act; we are unable to advise with respect to any other provisions of law or interpretations referenced in your inquiry, such as the Judicial Canon of Ethics or the interpretation of such provisions by the Commission on Judicial Performance. (Regulation 18329(b)(8)(D), 18329(c)(4)(F).)

## QUESTION

Your acquaintances wish to organize an event ("a belated birthday party") to raise funds to pay legal expenses incurred by you while defending yourself in a proceeding before the Commission on Judicial Performance last year. Are the funds received from

<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

such an event gifts, or are they campaign contributions and subject to the contribution limits and disclosure provisions of the Act?

#### CONCLUSION

Funds that you receive to pay for legal expenses incurred in defending against allegations before the Commission on Judicial Performance are contributions and are, therefore, subject to the contributions limits and disclosure provisions provided for in the Act.

#### FACTS

In 1989 you were the subject of a proceeding before the Commission on Judicial Performance ("Judicial Commission"). The proceeding resulted in the Judicial Commission's issuance to you of a letter of public reproof. You incurred legal expenses of \$80,000 in defending yourself in the proceedings. It is your understanding that the Judicial Canon of Ethics, as interpreted by the Judicial Commission, permits you to hold a fund-raiser only as it pertains to, or otherwise occurs during, a campaign for reelection. You have served several terms on the bench as a judge of the municipal court but have not yet decided whether to run for another term when your current term expires in 1992.

#### ANALYSIS

The Act imposes limits on the amounts of contributions a candidate may accept. (Section 85301, 85303.) The Act limits gifts to elected officeholders from lobbyists, or if the gift or honorarium is for a speech, article, or published work on a subject pertaining to the governmental process. (Section 85400; Papo Advice Letter, No. I-89-636, copy enclosed.)

The Act defines "candidate" as, among other things, an "individual who is listed on the ballot," and an individual who becomes a candidate retains such status until the status is terminated pursuant to other provisions of the Act. (Section 82007.) A judge elected to the municipal court is therefore a candidate under the Act and retains his or her status as a candidate while in office.

The Act defines a "contribution" as a payment made for a political purpose except to the extent that full and adequate consideration is received. (Section 82015.) A payment is made for a political purpose if it is received by:

A candidate, unless it is clear from the surrounding circumstances that the payment was

received for personal purposes unrelated to his or candidacy or status as an officeholder.

Regulation 18215(a)(2)(A) (copy enclosed).

An "expenditure" is defined as any payment made for political purposes (Section 82025), and includes any payment made by

A candidate, unless it is clear from the surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status as an officeholder.

Regulation 18225(a)(2)(A) (copy enclosed).

The definitions in Section 82015 and Regulations 18215 and 18225 serve as foundation for the Commission Opinions in In re Montoya (1989) 12 FPPC Ops. 6, In re Johnson (1989) 12 FPPC Ops. 1, and In re Buchanan (1979) 5 FPPC Ops. 14 (copies enclosed). The Commission concluded in each opinion that because the funds expended for legal defense constituted "payments made by a candidate" that were directly related to the candidate's status as a candidate or officeholder, the funds received to facilitate the making of such payments were deemed contributions under the Act.<sup>3</sup> And because the legal defense expenses arose out of a candidate's or elected officer's activities, duties, or status as a candidate or office holder, whether the proceeding was a criminal or civil case was not determinative.<sup>4</sup>

Whether a payment is considered a gift or a contribution therefore depends on the particular facts and circumstances of the situation. (Grindle Advice Letter, No. A-85-198, copy enclosed.) Your letter indicates that the funds received from the event will be used to defray the legal expenses you incurred in defending

---

<sup>3</sup> These expenses are permitted to be paid from campaign funds because the litigation arises directly out of a candidate's or elected officer's activities, duties, or status as a candidate or elected officer. (Government Code Section 85802.5(a); see also Thirteen Committee v. Weinreb (1985) 168 Cal.App.3d 528, 536.)

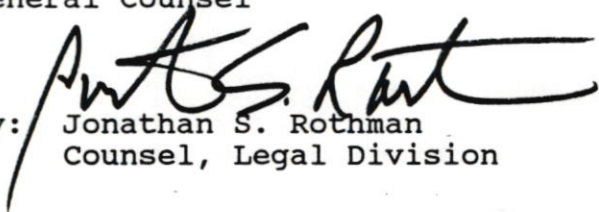
<sup>4</sup> In Montoya, the officeholder raised funds for his defense against a criminal indictment alleging violation of federal criminal statutes concerning the legislator's conduct in his capacity a member of the Legislature. In Johnson, the officeholder raised funds for his defense against a civil lawsuit which challenged his election on the grounds of unlawful conduct occurring at the polls on election day. In Buchanan, the candidate raised funds in connection with his defense against a civil action which sought to have his name removed from the ballot.

yourself against charges before the Judicial Commission. Both the proceedings, and the legal expenses you have incurred in defending yourself against the charges, were directly related to your status as an officeholder. Therefore, the funds you spend to defend against the allegations are "expenditures." (Regulation 18225(a)(2)(A).) The funds received by you for those expenditures are "contributions."<sup>5</sup> (Regulation 18215(a)(2)(A).) The fact that the proceedings before the Commission on Judicial Performance are administrative, rather than criminal or civil, does not change this determination. For this reason, the funds received by you to defray these expenses are contributions, and not gifts, under the Act.

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter please contact me at (916) 322-5091.

Sincerely,

Kathryn E. Donovan  
General Counsel

By:   
Jonathan S. Rothman  
Counsel, Legal Division

KED:JSR:plh

Enclosures

---

<sup>5</sup> The Act places the following fiscal year limits on contributions to candidates: contributions from any person are restricted to \$1,000 (Section 85301); contributions from any political committee are restricted to \$2500 (Sections 82013, 85303(a); contributions from any broad-based political committee (Regulation 18502) or political party are limited to \$5000 (Section 85303(b)).